

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

TODD LOPEZ, ESQ., as Guardian ad Litem for  
A.R.O., a minor child, AMANDO ORTIZ, SR.,  
individually, and Tanya Ortiz, individually,

Plaintiffs,

v.

No. 2:23-cv-0239 KRS/DLM

UNITED STATES OF AMERICA,

Defendant.

**JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN**

Pursuant to FED. R. CIV. P. 26(f), a meeting was held on July 6, 2023, at 10:00 a.m. and  
was attended by:

Stephen Marshall and David Fadduol for Plaintiffs

Roberto Ortega and Benjamin Minegar for Defendant

**NATURE OF THE CASE**

This is a medical negligence case.

A.R.O. was born at Gila Regional Medical Center and received negligent care during his  
hospital stay, which is being litigated in a state court case (*Todd Lopez, Esq., as Guardian ad  
Litem for A.R.O., et al., Plaintiffs v. Gila Regional Medical Center, et al., Defendants*, D-101-  
CV-2021-01916).

This case involves the separate conduct of Brian Etheridge, M.D. who later provided care  
to A.R.O.

**AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES**

Plaintiffs intend to file: None.

Plaintiffs should be allowed until August 27, 2023, to move to amend the pleadings and until August 27, 2023, to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

Defendant intends to file: Defendant is still assessing whether additional parties will be joined to this case.

Defendant should be allowed until September 25, 2023 to move to amend the pleadings and until September 25, 2023 to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

### **STIPULATIONS**

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter for those claims that have been properly exhausted in the administrative process and to the extent permitted by the Federal Tort Claims Act.

The parties are willing to further stipulate to the following facts: None.

The parties further stipulate and agree that the law governing this case is:  
The Federal Tort Claims Act and the substantive law of New Mexico.

### **PLAINTIFF'S CONTENTIONS:**

Plaintiffs contend that A.R.O. was born at Gila Regional Medical Center (“GRMC”) on June 2, 2020, to Amando Ortiz, Sr. and Tanya Ortiz. During the course of his three-day stay at GRMC, A.R.O. had jaundice which led to his bilirubin levels being tested multiple times. The results of those tests showed that A.R.O.’s conjugated bilirubin levels were abnormally high and trending upward. Such abnormal lab values are consistent with biliary atresia, a condition that can cause permanent liver damage if not treated promptly. Plaintiffs contend that Dr. Brian Etheridge had access to the abnormal lab values. Additionally, Dr. Etheridge provided newborn

care to A.R.O. following his discharge from GRMC. A.R.O. had his first visit with Dr. Etheridge on June 9, 2020. Between that first visit and a July 28, 2020, visit, Dr. Etheridge saw A.R.O. on 5 different occasions. Although Dr. Etheridge's initial notes do not make any mention of jaundice, he was aware that A.R.O. had jaundice based on his subsequent notes. Plaintiffs contend that Dr. Etheridge failed to timely address A.R.O.'s ongoing jaundice, diagnose A.R.O.'s biliary atresia, and refer A.R.O. to a specialist. Had Dr. Etheridge taken these steps, A.R.O. would have promptly received a Kasai Procedure to treat his biliary atresia and not suffered irreparable damage to his liver.

### **DEFENDANT'S CONTENTIONS**

Defendant United States of America contends that its employee(s) at the Hidalgo Medical Services who treated Plaintiff possessed and applied the knowledge and used the skill and care ordinarily used by reasonably well qualified hospitals, clinics, and physicians in the care of Plaintiff. The United States also contends that none of its employees acted negligently in caring for Plaintiff, nor did any employee of Defendant cause the alleged harms, injuries, or damage to Plaintiff. The United States further contends that to the extent that Plaintiff alleges that any negligent acts were performed by any non-employee personnel, the United States is not liable for their actions under the Federal Tort Claims Act.

Defendant United States also incorporates by reference and asserts the affirmative defenses stated in its Answer to the Amended Complaint. *See* Doc. 12.

### **PROVISIONAL DISCOVERY PLAN**

The parties jointly propose to the Court the following discovery plan: *(Use separate paragraphs or subparagraphs as necessary if parties disagree.)*

List all witnesses who, at this time, you think will either testify or be deposed, giving their name, title, address and a brief summary of their testimony. It is insufficient to list witnesses' addresses, save for clients, "in care of counsel."

List all documents which you believe, at this time, will be exhibits at the trial.

List all experts who you believe, at this time, will testify at the trial, giving their name, address, area of expertise, and a brief summary of the anticipated testimony.

Plaintiffs' witnesses:

1. Plaintiffs Amando Ortiz, Sr. and Tanya Ortiz  
c/o David Fadduol  
Law Office Of David Fadduol, LLC  
P.O. Box 90787  
Albuquerque, NM 87199

and

Stephen R. Marshall  
MARSHALL LAW, P.C.  
509 Roma Avenue Northwest  
Albuquerque, New Mexico 87102

It is anticipated that Plaintiffs will testify regarding the events surrounding A.R.O.'s birth and subsequent medical care, as described in Plaintiffs' Complaint. They are also expected to testify regarding their own and A.R.O.'s injuries and damages.

2. Brian Etheridge, M.D.  
c/o United States Attorney's Office  
P.O. Box 607  
Albuquerque, NM 87103

It is anticipated that Dr. Etheridge will testify regarding his education and training and the medical care that he provided to A.R.O.

3. It is anticipated that the employees, providers, and representatives of A.R.O.'s medical providers listed below and more fully identified in the discovery of this case may testify regarding the treatment provided to A.R.O.:

Hidalgo Medical Services  
University of New Mexico Hospital  
Colorado Children's Hospital  
Air Methods  
Ambercare

Guardian Medical Flight  
Deming Children's Dentistry

Plaintiffs' exhibits:

1. A.R.O.'s medical records and bills from Gila Regional Medical Center;
2. A.R.O.'s medical records and bills from Hidalgo Medical Center;
3. A.R.O.'s medical records and bills from University of New Mexico;
4. A.R.O.'s medical records and bills from Colorado Children's Hospital;
5. Additional records, bills, documents produced in discovery;
6. Any exhibits, studies, treatises, or other material relied on by experts for either Plaintiff or Defendant.
7. Exhibits identified or listed by Defendant.
8. Any relevant documents obtained or produced during the discovery process.

Defendant's witnesses:

1. Brian Etheridge, M.D.  
c/o United States Attorney's Office  
P.O. Box 607  
Albuquerque, NM 87103

It is anticipated that Dr. Etheridge will testify regarding his education and training and the medical care that he provided to A.R.O.

2. Brandon Ferguson, M.D.  
c/o United States Attorney's Office  
P.O. Box 607  
Albuquerque, NM 87103

It is anticipated that Dr. Ferguson will testify regarding his education and training and the medical care that he provided to A.R.O.

3. Pankaj Vohra, M.D.  
UNM Department of Pediatrics  
2211 Lomas Blvd. N.E.  
Albuquerque, NM 87131

It is anticipated that Dr. Vohra will testify regarding his education and training and the medical care that he provided to A.R.O.

4. Joseph Kuhn, M.D.  
UNM Department of Surgery  
2211 Lomas Blvd. N.E.  
Albuquerque, NM 87131

It is anticipated that Dr. Kuhn will testify regarding his education and training and the medical care that he provided to A.R.O.

5. Lena Perger, M.D.  
UNM Department of Surgery  
2211 Lomas Blvd. N.E.  
Albuquerque, NM 87131

It is anticipated that Dr. Perger will testify regarding her education and training and the medical care that he provided to A.R.O.

6. Jacqueline Fridge, M.D.  
UNM Department of Pediatrics  
2211 Lomas Blvd. N.E.  
Albuquerque, NM 87131

It is anticipated that Dr. Fridge will testify regarding her education and training and the medical care that he provided to A.R.O.

Defendant's Exhibits:

1. A.R.O.'s medical records and bills from Gila Regional Medical Center.
2. A.R.O.'s medical records and bills from Hidalgo Medical Center.
3. A.R.O.'s medical records and bills from University of New Mexico.
4. Additional records, bills, documents produced in discovery.
5. Exhibits, studies, treatises, or other material relied on by experts for either Plaintiff or Defendant.
6. Exhibits identified or listed by Plaintiff.
7. Any relevant documents obtained or produced during the discovery process.

### **PLAINTIFFS' EXPERTS**

Plaintiffs will disclose their retained expert(s) and expert report(s) pursuant to Federal Rule of Civil Procedure 26 (a)(2).

### **DEFENDANT'S EXPERTS**

The United States has not yet identified any experts but reserves the right to do so as set forth by the Federal Rules of Civil Procedure and the case management deadlines set by the Court.

Discovery will be needed on the following subjects: Liability and damages.

Maximum of 30 interrogatories by each party to any other party inclusive of all subparts. (Responses due 30 days after service).

Maximum of 30 requests for production by each party to any other party inclusive of all subparts. (Responses due 30 days after service).

Maximum of 30 requests for admission by each party to any other party. (Response due 30 days after service).

Maximum of 10 depositions by Plaintiff(s) and 10 by Defendant(s).

Each deposition (other than of parties and experts) limited to maximum of 4 hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff(s) by October 25, 2023.

from Defendant(s) by November 24, 2023.

Supplementation under Rule 26(e) due 30 days after disclosure.

All discovery commenced in time to be complete by January 23, 2024.

Other Items: Pursuant to Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure, the Civil Division of the United States Attorney's Office, District of New Mexico

(“Civil Division”) agrees to accept service of discovery by e-mail in the above captioned action only upon the following conditions:

1. All electronically served discovery requests or responses must be sent to the assigned AUSA and to **USANM.Civil.Discovery@usdoj.gov** to be considered properly “served” under the Rule.
2. If documents are too large to serve by electronic mail, they may be served by USAfx, other cloud storage service, or regular mail. If you choose to use USAfx, the cloud storage device used by the Civil Division, please inform the assigned AUSA so that the Civil Division can set up access for you and the folder where you will upload the documents.
3. Civil Division support staff will confirm receipt of electronically served discovery within two business days. If the sender does not receive a confirmation of receipt, the sender will assume that the Civil Division did not receive the e-mail and will contact the assigned AUSA immediately.

### **PRETRIAL MOTIONS**

Plaintiff intends to file: Motions in Limine, Motions for Summary Judgment

Defendant intends to file: Motion(s) to Dismiss; Motion(s) for Summary Judgment;

*Daubert* motions; Motions in Limine.

### **ESTIMATED TRIAL TIME**

The parties estimate trial will require 5 days.

XX This is a non-jury case.

\_\_\_\_\_ This is a jury case.

The parties request a pretrial conference shortly after termination of discovery.

### **SETTLEMENT**

The possibility of settlement in this case cannot be evaluated prior to engaging in discovery.



APPROVED WITHOUT EXCEPTIONS

/s/ David Fadduol

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Approved via email 7/17/2023

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